THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 10932 OF 2006

DATED: 09-11-2006

Between:

Kotapati Muni Subba Rayudu … Petitioner

And

The Joint Collector,
Kadapa, Kadapa District
And four others … Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 10932 OF 2006

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader for Home for respondents 1 to 4 and Sri V.R.Kovvuri, learned counsel for the 5th respondent.

The writ petition itself is being disposed of by this order.

Petitioner assails the first respondent's order dated 26-05-2006 recalling his earlier order (directing the closure of Sri Krishna Picture Palace, Kadapa) and granting permission to run the theatre subject to certain conditions. The conditions imposed for granting the order are not relevant or germane to the disposition of this writ petition.

The undisputed facts are that one Kotapati Munnaiah established this theatre. The petitioner and the 5th respondent are his sons. On the demise of Munnaiah, the sons formed a partnership firm known as Kotapati Munnaiah and Sons. The petitioner and the 5th respondent are only the partners of this firm. For some time there was amity between the partners and during that time, the 5th respondent was entrusted with the management of the theatre under a

memorandum of understanding dated 29-12-2003. There were certain obligations to be fulfilled by the 5th respondent under the memorandum of understanding, which are also not germane and relevant for the purpose of this writ petition.

Disputes, which were simmering got precipitated between the 5th respondent and the petitioner. The petitioner by due notice dissolved the partnership with effect from 17-02-2006. This fact is not disputed by the 5th respondent. On the dissolution of Kotapati Munnaiah and Sons with effect from 17-02-2006, the licence granted to the theatre stood dissolved. Oblivious to this legal position, the 5th respondent on 30-11-2005 applied to the first respondent for renewal of 'B' form licence. There were certain other disputes between the erstwhile management of the theatre and the entertainment tax and other authorities with regard to the errears of entertainment tax due and payable by and on behalf of the theatre to the revenue. These are also not relevant and germane for the purposes of this writ petition.

By the order impugned, the first respondent after recording a satisfaction that the Deputy Commissioner, Commercial Tax Department permitted payment of arrears of entertainment tax in instalments commencing from May 2006 and recording the submission of 5th respondent that he had paid the entertainment tax to the concerned A.C.T.O., recalled the earlier order directing cancellation of the theatre licence and its closure and granted permission to run the theatre. In substance he granted the 'B' form licence. Aggrieved by the renewal of licence in favour of the dissolved entity and personally aggrieved by the consequences of such renewal, the petitioner is before this Court seeking appropriate relief.

The first respondent has filed a counter-affidavit stating that he had considered the 5th respondent's application for renewal and noticing that the Commercial Tax authorities had permitted payment of arrears of entertainment tax in instalments, granted renewal of the

licence. It is also stated by the first respondent that he had examined and perused the partnership dated 30-03-1993 and found Cl.No.12 therein enabling any disputes between the partners to be referred to arbitration and therefore, he formed an opinion that the petitioner could invoke the provisions of Arbitration Act in view of Cl.12 in the partnership deed, and proceeded to grant renewal.

The learned counsel for the 5th respondent does not contest the factum of dissolution of partnership. It cannot be contested either. As there was no legal entity and as the earlier licence ceased to exist in law with effect from 17-02-2006 on the dissolution of the firm, no renewal could have been granted by the first respondent on 26-05-2006. There appears no escape from this legal position.

In the circumstances above, the impugned order of the first respondent dated 26-05-2006 granting renewal of licence/permission to run the theatre (Sri Krishna Picture Palace, Kadapa) is unsustainable.

This writ petition is accordingly allowed quashing the order impugned. There shall be no order as to costs however.

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GODA RAGHURAM, J.

Dt: 11-10-2006
Rns